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INTERSTATE COMMERCE COMMISSION

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INTERSTATE COMMERCE COMMISSION

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INTERSTATE COMMERCE COMMISSION

Mr. Robert Oswald
SecretaryInterstate Commerce Commission
Washington, D. C. 20423

May 26, 1977

CC Washington, D.

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CORRELATION NO. Filed & Recorded

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INTERSTATE COMMERCE COMMISSION

Dear Mr. Oswald:

In pursuance of the provisions of Section 20c of the Interstate Commerce Act, as amended, and the Regulations of the Interstate Commerce Commission promulgated thereunder, there are herewith transmitted for filing and recording the following documents:

1. Six (6) instruments constituting executed Conditional Sale Agreements dated as of April 15, 1977, executed in counterpart, among General Motors Corporation (Electro Motive Division), as Builder, New England Merchants Leasing Corporation B-3, as Vendee, and the Toledo, Peoria & Western Railroad Company, as Lessee, covering four (4) G.P. Model 38-2 2000 horsepower diesel electric locomotives;
2. Six (6) executed Agreement and Assignments dated as of April 15, 1977 between General Motors Corporation (Electro Motive Division), as Builder, and the Commercial National Bank of Peoria, as Assignee, relating to the aforesaid Conditional Sale Agreement, and executed in counterpart;
3. Six (6) instruments constituting six executed Leases of Equipment dated as of April 15, 1977, executed in counterpart, between New England Merchants Leasing Corporation B-3, as Lessor, and the Toledo, Peoria & Western Railroad Company, as Lessee, covering the lease of the aforementioned four locomotives;

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Mr. Robert Oswald
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4. Six (6) instruments constituting six executed Assignment of Lease and Agreement executed in counterpart dated as of April 15, 1977 between New England Merchants Leasing Corporation B-3, as Lessor, and the Commercial National Bank of Peoria, relating to the aforesaid Lease of Equipment.

A check in the amount of \$100.00 made payable to the Treasurer of the United States is herewith tendered in payment of the recordation fee with respect to the Conditional Sale Agreement, the Agreement and Assignment, the Lease, and the Assignment of Lease and Agreement.

In respect of the Conditional Sale Agreement, the names and addresses of the respective parties are as follows:

Builder: General Motors Corporation
(Electro Motive Division)
LaGrange, Illinois 60525

Vendee: New England Merchants Leasing Corporation B-3
One Washington Mall
16th Floor
Boston, Massachusetts 02107

Lessee: Toledo, Peoria & Western Railroad Company
2000 East Washington Street
East Peoria, Illinois 61611

In respect of the Agreement and Assignment, the names and addresses of the parties are:

Builder: General Motors Corporation
(Electro Motive Division)
LaGrange, Illinois 60525

Assignee: Commercial National Bank of Peoria
301 South Adams Street
Peoria, Illinois 61602

In respect of the Lease, the names and addresses of the parties are:

Lessor: New England Merchants Leasing
Corporation B-3
One Washington Mall
16th Floor
Boston, Massachusetts 02107

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REGISTRATION NO. _____ FILE NO. _____

LEASE OF EQUIPMENT

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INTERSTATE COMMERCE COMMISSION

LEASE OF EQUIPMENT dated as of April 15, 1977, between NEW ENGLAND MERCHANTS LEASING CORPORATION B-3, a corporation organized under the laws of the Commonwealth of Massachusetts (hereinafter called the "Lessor"), and TOLEDO, PEORIA & WESTERN RAILROAD COMPANY, a corporation organized under the laws of the State of Illinois, (hereinafter called the "Lessee").

WHEREAS, the Lessor, as Vendee, and the Lessee have entered into a Conditional Sale Agreement dated as of the date of this Lease (hereinafter called the "Security Documents") with General Motors Corporation (Electro Motive Division) (hereinafter referred to as the "Builder") wherein the Builder has agreed to manufacture, sell and deliver to the Lessor the units of railroad equipment described in Exhibit A hereto; and

WHEREAS, the Builder has or will assign its interest in the Security Documents to Commercial National Bank of Peoria (hereinafter with its successors and assigns referred to as the "Vendor"); and

WHEREAS, the Lessee desires to lease all of the units of railroad equipment described on Exhibit A attached hereto, or such lesser number as are delivered and accepted and settled for under the terms hereof (hereinafter referred to collectively as the "Units" and individually as a "Unit") at the rentals and for the terms and upon the conditions hereinafter provided;

NOW, THEREFORE, in consideration of the premises and of the rentals to be paid and the covenants hereinafter mentioned to be kept and performed by the Lessee, the Lessor hereby leases the Units to the Lessee upon the following terms and conditions:

SECTION 1: Net Lease. This Lease is a net lease and the Lessee shall not be entitled to any abatement of rent, reduction thereof or setoff against rent, including, but not limited to, abatements, reductions or setoffs due or alleged to be due by reason of any past, present or future claims of the Lessee against the Lessor under this Lease or otherwise; nor, except as otherwise expressly provided

herein, shall this Lease terminate, or the respective obligations of the Lessor or the Lessee be otherwise affected, by reason of any defect in or damage to or loss of possession or loss of use or destruction of all or any of the Units from whatsoever cause, any liens, encumbrances or rights of others with respect to any of the Units, the prohibition of or other restriction against the Lessee's use of all or any of the Units, the interference with such use by any person or entity (other than Lessor or Vendor), the invalidity or unenforceability or lack of due authorization of this Lease, any insolvency of or the bankruptcy of, reorganization of or similar proceeding against the Lessee, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other amounts payable by the Lessee hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease. To the extent permitted by applicable law, the Lessee hereby waives any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender the lease of any of the Units, except in accordance with the express terms hereof. Each rental or other payment made by the Lessee hereunder shall be final and the Lessee shall not seek to recover all or any part of such payment from the Lessor for any reason whatsoever.

SECTION 2: Delivery and Acceptance of Units. The Lessor hereby appoints the Lessee or any person or persons appointed by the Lessee its agent for inspection and acceptance of the Units pursuant hereto. Lessee agrees to cause the Units to be accepted on behalf of the Lessor and the Lessee. The Lessor will cause each Unit to be delivered to the Lessee at the point or points at which such Unit is delivered to the Lessor. Upon such delivery, the Lessee will cause an inspector appointed by the Lessee to inspect the same, and if such Unit is found to be acceptable, to accept delivery of such Unit and execute and deliver to the Lessor a certificate of acceptance (hereinafter called the "Certificate of Acceptance") in accordance herewith, stating that such Unit has been inspected and accepted on behalf of the Lessor and the Lessee on the date of such Certificate of Acceptance and is marked in accordance with Section 5 hereof, whereupon such Unit shall be deemed to have been delivered to and accepted by the Lessee and shall be subject thereafter to all the terms and conditions of this Lease. Such Certificate of Acceptance shall be substantially in the form of Exhibit B attached hereto. This Lease shall be applicable only to Units accepted pursuant to this Section 2 prior to July 1, 1977.

SECTION 3: Rentals. The Lessee agrees to pay on July 1, 1977 to the Lessor for each Unit subject to the Lease on July 1,

1977 as interim rental an amount equal to .0236111% of the purchase price of such Unit as set forth on Exhibit A (hereinafter called the "Purchase Price"), for each day elapsed from and including the date such Unit was accepted pursuant to Section 2 to and including June 30, 1977 and thereafter to make 30 consecutive semi-annual payments payable on January 1, and July 1, in each year commencing January 1, 1978 with the final rental payment due July 1, 1992. Semi-annual rental payments shall each be in an amount equal to 5.2681% of the aggregate Purchase Price of the Units.

The rental payments, including any interim rental payments, hereinabove set forth, are subject to adjustment pursuant to the fourth paragraph of Section 17. If any of the semi-annual rental payment dates referred to above is not a business day, the semi-annual rental payment otherwise payable on such date shall be payable on the next succeeding business day.

Lessee agrees to make all payments provided for in this Lease at such place in the United States of America as the Lessor may in writing direct.

SECTION 4: Term of Lease. The term of this Lease as to each Unit shall begin on the date of acceptance of such Unit pursuant to Section 2 and, subject to the provisions of Sections 7, 10 and 13 hereof, shall terminate on July 1, 1992.

SECTION 5: Identification Marks. The Lessee will cause each Unit to be kept numbered with the applicable identifying number set forth in Exhibit A hereto, or in the case of any Unit not so listed, such identifying number as shall be set forth in any amendment or supplement hereto extending this Lease to cover such Unit, and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each Unit, in letters not less than 1/2 inch in height, the words "Owned by and Leased from New England Merchants Leasing Corporation B-3 and Subject to a Security Interest to Commercial National Bank of Peoria granted by a Conditional Sale Agreement filed under the Interstate Commerce Act, Section 20c" or other appropriate words designated by the Lessor, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the Lessor's and Vendor's title to and property in such Unit and the rights of the Lessor under this Lease, and of the Vendor. The Lessee will not place any such Unit in operation or exercise any control or dominion over the same until such name and words shall have been so marked on both sides thereof and will replace promptly any such numbers and words which may be removed, defaced or destroyed. The Lessee will not change the identifying number of any Unit unless and until (i) a statement of new number or numbers to be substituted therefor shall have been filed with the Vendor and the Lessor and filed, recorded and deposited by the Lessee in all public offices where this Lease and the Security Documents

shall have been filed, recorded and deposited pursuant to Section 16 hereof, and (ii) the Lessee shall have furnished the Vendor and the Lessor an opinion of counsel to the effect set forth in subparagraph 9 of Section 15 hereof in respect of such statement.

Except as provided in the immediately preceding paragraph, the Lessee will not allow the name of any person, association or corporation to be placed on any Unit as a designation that might be interpreted as a claim of ownership; provided, however, that the Units may be lettered with the names or initials or other insignia customarily used by the Lessee or its affiliates.

SECTION 6: Taxes. All payments to be made by the Lessee hereunder will be free of expense to the Lessor and Lessee shall upon the Lessor's demand assume and pay (or reimburse the Lessor for the payment by it of): (A) collection or other charges; (B) the amount of any state, local or federal taxes, other than taxes of the United States or of any state or political subdivision thereof imposed on or measured solely by the Lessor's net income; and (C) any license fees, assessments, charges, fines and penalties hereafter levied or imposed upon or in connection with or measured by this Lease or by any sale, rental, use, payment, shipment, delivery, transportation or transfer of title under the terms hereof.

All such expenses, taxes, license fees, assessments, charges, fines and penalties shall be hereinafter called "Impositions". The Lessee will also pay promptly all Impositions which may be imposed upon any Unit or for the use or operation thereof or upon the earnings arising therefrom (except as provided above) or upon the Lessor, or Vendor, solely by reason of their respective interests and will keep at all times all and every part of such Unit free and clear of all Impositions which might in any way affect the interests of the Lessor or Vendor, or result in a lien upon any such Unit; provided, however, that the Lessee shall be under no obligation to pay any Impositions of any kind so long as it has notified the Lessor in writing that it is contesting in good faith and by appropriate legal proceedings such Impositions and so long as the nonpayment thereof does not, in the reasonable opinion of the Lessor, adversely affect the title, property or rights of the Lessor, or the Vendor.

In the event any reports or returns with respect to Impositions are required to be made, the Lessee will either make or cause to be made such reports or returns in such manner as to show the interests of the Lessor and the Vendor in such Units or notify the Lessor and the Vendor of such requirement and make or cause to be made such reports in such manner as shall be reasonably satisfactory to the Lessor and the Vendor; provided, however, that the Lessor, and the Vendor, shall provide such information and assistance as shall be appropriate in the circumstances. Lessee shall send or cause to be sent a copy of each such report or return to Lessor and Vendor, or will notify Lessor and Vendor of such requirement and make or cause to be made such report or return in such manner as shall be reasonably satisfactory to Lessor.

In the event that, during the continuance of this Lease, the Lessee becomes liable for the payment or reimbursement of any Imposition, pursuant to this Section 6, such liability shall continue, notwithstanding the expiration of this Lease, until all such Impositions are paid or reimbursed by the Lessee.

SECTION 7. Payment for Casualty Occurrences. In the event that (a) any Unit shall be or become worn out, lost, stolen, destroyed, or, in the opinion of the Lessor or the Lessee, irreparably damaged, from any cause whatsoever, or taken or requisitioned by condemnation or otherwise; (b) title thereto shall be requisitioned or seized by any governmental agency; or (c) title to any Units shall be impaired and Lessee's or Lessor's right of possession lost for a period of 60 days or more as a result of the failure of Lessee to take such steps as may be necessary to protect and preserve the title of Lessor and Vendor to the Units in any jurisdiction outside of the United States by recording, registration or otherwise (such occurrences being hereinafter called Casualty Occurrences) during the term of this Lease, the Lessee shall promptly and fully notify the Lessor and Vendor in writing with respect thereto. On the rental payment date next succeeding such notice (or, in the event such notice is delivered after the 60th day next preceding the expiration of the term of this Lease or any renewal or extension thereof, within 60 days after Casualty Occurrence) the Lessee shall pay to the Lessor an amount equal to the rental payment or payments in respect of such Unit due and payable on such date plus a sum equal to the Casualty Value (as hereinafter defined) of such Unit as of the date of such payment in accordance with the schedule of Casualty Values attached hereto as Exhibit C; provided, however, that the Casualty Value of any Unit for any date after June 30, 1992 shall be deemed to be the Casualty Value for such Unit on June 30, 1992. Upon the making of such payment by the Lessee in respect of any Unit, the rental for such Unit shall cease to accrue, the term of this Lease as to such Unit shall terminate and (except in the case of the loss,

theft or complete destruction of such Unit) the Lessor shall be entitled to recover possession of such Unit. The Lessor hereby appoints the Lessee its agent to dispose of any Unit suffering a Casualty Occurrence, at the best price obtainable on an "as is, where is" basis. Provided that the Lessee has previously paid the Casualty Value, the Lessee shall be entitled to the proceeds of such Unit, up to the Casualty Value, and shall pay any excess to the Lessor after deduction from such excess of the reasonable expenses of the Lessee incident to such sale.

The Casualty Value of each Unit as of the payment date on which payment is to be made as aforesaid shall be that percentage of the Purchase Price of such Unit as is set forth in Exhibit C attached hereto.

Except as hereinabove in this Section 7 provided, the Lessee shall not be released from its obligations hereunder in the event of, and shall bear the risk of any Casualty Occurrence to any Unit from and after delivery and acceptance thereof by the Lessee hereunder.

SECTION 8: Reports. Contemporaneously with the rental payment due January 1, 1978 and each year thereafter, the Lessee will furnish to the Lessor and Vendor an accurate statement (a) setting forth as of January 1, 1978 and each year thereafter, the amount, description and identifying numbers of all Units then leased hereunder, description and identifying numbers of all Units that have suffered a Casualty Occurrence and such other information regarding the condition and state of repair of the Units as the Lessor or Vendor may reasonably request and (b) stating that, in the case of all Units repainted or repaired during the period covered by such statement, the identifying numbers and the markings required by Section 5 hereof have been preserved or replaced. The Lessor shall have the right by its employees or agents, to inspect the Units and the Lessee's records with respect thereto at such reasonable times as the Lessor may request during the continuance of this Lease.

SECTION 9: Disclaimer of Warranties; Compliance with Laws and Rules; Maintenance; Indemnification. THE LESSOR MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE DESIGN OR CONDITION OF, OR AS TO THE QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMANSHIP IN, THE UNITS DELIVERED TO THE LESSEE HEREUNDER, AND THE LESSOR MAKES NO WARRANTY OF MERCHANTABILITY OR FITNESS OF THE UNITS FOR ANY PARTICULAR PURPOSE OR AS TO TITLE TO THE UNITS OR ANY COMPONENT THEREOF, IT BEING AGREED THAT ALL SUCH RISKS, AS BETWEEN THE LESSOR AND THE LESSEE, ARE TO BE BORNE BY THE LESSEE: but the Lessor hereby irrevocably appoints and constitutes the Lessee its agent and attorney-in-fact during the term of this Lease to assert and enforce from time to time, in the

name of and for account of the Lessor and/or the Lessee, as their interests may appear, at the Lessee's sole cost and expense, whatever claims and rights the Lessor may have against the Builder of the Units and any of its subcontractors. Any sum collected as a result of such enforcement shall be paid to Lessee to the extent required to correct the defects in the Units and the balance shall remain the property of Lessor. The Lessee's delivery of a Certificate of Acceptance shall be conclusive evidence as between the Lessee and the Lessor that the Units described therein are in all the foregoing respects satisfactory to the Lessee, and the Lessee will not assert any claim of any nature whatsoever against the Lessor based on any of the foregoing matters.

The Lessee agrees, for the benefit of the Lessor, to comply in all respects with all laws of the jurisdictions in which operations involving any Unit subject to this Lease may extend, with the Interchange Rules of the Association of American Railroads, if applicable, and with all lawful rules of the Department of Transportation, and the Interstate Commerce Commission, if applicable, and any other legislative, executive, administrative or judicial body or officer exercising any power or jurisdiction over any such Unit to the extent such laws and rules affect the operation or use of such Unit; and the Lessee shall and does hereby indemnify the Lessor and agrees to hold the Lessor harmless from and against any and all liability that may arise from any infringement or violation of any such laws or rules by the Lessee, the Lessee's employees or any other person. In the event that such laws or rules require the alteration of any Unit or in case any equipment or appliance on any such Unit shall be required to be changed or replaced or in case any additional or other equipment or appliance is required to be installed on such Unit in order to comply with such laws and rules, the Lessee agrees to make such alterations, changes, additions and replacements at its own expense and to use, maintain and operate such Unit in full compliance with such laws and rules so long as such Unit is subject to this Lease; provided, however, that the Lessee may, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Lessor, adversely affect the property or rights of the Lessor hereunder.

The Lessee agrees that, at its own cost and expense, it will maintain and keep each Unit (including any parts installed on or replacements made to any Unit and considered an accession thereto as hereinbelow provided) which is subject to this Lease in good working order, condition and repair, suitable for use in unrestricted interchange and each Unit shall be returned to Lessor at the termination of the Lease in such condition, reasonable wear and tear excepted. Said maintenance shall include, but not be limited to maintenance

of all interior devices existing in the Units in good working order and condition. Except for alterations or changes required by law, Lessee shall not, without the prior written approval of Lessor, effect any permanent structural change in the design, construction or body of the Units or appurtenances thereto.

Any and all additions to any Unit and any and all parts installed on or replacements made to any Unit shall be considered accessions to such Unit and, without cost or expense to the Lessor, there shall immediately be vested in the Lessor the same interests in such accessions as the interests of the Lessor in such Unit. The Lessee may make alterations or modifications to any Unit so long as they do not affect the value of such Unit adversely.

The Lessee agrees to indemnify and save harmless the Lessor against any charge, claim, damage, injury, expense, loss or liability (including but not limited to strict liability imposed by statute or rule of law, counsel fees and expenses, patent liabilities, liabilities, penalties and interest charges which the Lessor may incur in any manner by reason of entering into or performing this Lease or any of the instruments or agreements referred to herein or contemplated hereby or the ownership of, or which may arise in any manner out of or as the result of the acquisition, purchase, use, operation, condition, delivery, rejection, storage or return of, any Unit while subject to this Lease or until no longer in the possession of or stored by the Lessee in accordance with the terms hereof, whichever is later, and to indemnify and save harmless the Lessor against any charge, claim, damage, injury, expense, loss or liability (including but not limited to strict liability imposed by statute or rule of law, counsel fees and expenses) on account of any accident in connection with the operation, use, condition, possession or storage of any Unit resulting in damage to property, or injury to or death of any person. The indemnities contained in this paragraph shall survive payment of all other obligations under this Lease and the termination of this Lease.

The Lessee agrees to prepare and deliver to the Lessor within a reasonable time prior to the required date of filing (or, to the extent permissible, file on behalf of, and furnish a copy to, the Lessor) any and all reports known by the Lessee to be required to be filed by the Lessor, or requested by the Lessor to be filed, with any Federal, State or other regulatory authority by reason of the ownership by the Lessor of the Units or the leasing of the Units to the Lessee.

SECTION 10: Default. If, during the continuance of this Lease, one or more of the following events (each such event being hereinafter sometimes called an Event of Default) shall occur:

A. default shall be made in payment of any part of the rental provided in Section 3 hereof, and such default shall continue for ten days;

B. the Lessee shall make or permit any unauthorized assignment or transfer of this Lease or of possession of the Units, or any thereof;

C. default shall be made in the observance or performance of any other of the covenants, conditions and agreements on the part of the Lessee contained herein or in the Security Documents, and such default shall continue for 30 days after written notice from the Lessor or the Vendor to the Lessee specifying the default and demanding that the same be remedied;

D. any material representation or warranty made by the Lessee herein or in any document or certificate furnished to the Lessor in connection herewith or pursuant hereto shall at any time prove to be incorrect when made;

E. the Lessee shall consent to the appointment of a receiver, trustee or liquidator of itself or of a substantial part of its property, or the Lessee shall admit in writing its inability to pay its debts generally as they come due, or shall make a general assignment for the benefit of creditors, or the Lessee shall file a voluntary petition in bankruptcy or a voluntary petition or an answer seeking reorganization in a proceeding under any bankruptcy laws (as now or hereafter in effect) or an answer admitting the material allegations of a petition filed against the Lessee in any such proceeding, or the Lessee shall by voluntary petition, answer or consent, seek relief under the provisions of any other now existing or future bankruptcy or other similar law providing for the reorganization or winding-up of corporations, or providing for an agreement, composition, extension or adjustment with its creditors;

F. an order, judgment or decree shall be entered by any court or governmental agency of competent jurisdiction appointing, without the consent of the Lessee, a receiver, trustee or liquidator of the Lessee or of any substantial part of its property, or any substantial part of the property of the Lessee shall be sequestered, and any such order, judgment or decree of appointment or sequestration shall remain in force undismitted, unstayed or unvacated for a period of 60 days after the date of entry thereof;

G. a petition against the Lessee in a proceeding under the Federal bankruptcy laws or other insolvency laws (as now or hereafter in effect) shall be filed and shall not be withdrawn or dismissed within 60 days thereafter, or if,

under the provisions of any law providing for reorganization or winding-up of corporations which may apply to the Lessee, any court of competent jurisdiction shall assume jurisdiction, custody or control of the Lessee or of any substantial part of its property and such jurisdiction, custody or control shall remain in force unrelinquished, unstayed or untermi-nated for a period of 60 days;

then, in any such case, the Lessor, at its option, may:

(a) proceed by appropriate court action or actions either at law or in equity, to enforce per-formance by the Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof, including the after tax losses of Federal and state income tax benefits to which the Lessor would otherwise be entitled under this Lease; or

(b) by notice in writing to the Lessee termi-nating this Lease, whereupon all rights of the Lessee to the use of the Units shall absolutely cease and terminate as though this Lease had never been made, but the Lessee shall remain liable as hereinafter provided; and thereupon the Lessor may by its agents enter upon the premises of the Lessee or other premises where any of the Units may be and take possession of all or any of such Units and thenceforth hold, possess and enjoy the same, free from any right of the Lessee, or its successors or assigns, to use the Units for any purposes whatever; but the Lessor shall, nevertheless, have a right to recover from the Lessee any and all amounts which, under the terms of this Lease, may be then due or which may have accrued to the date of such termination (computing the rental for any number of days less than a full rental period by multiplying the rental for such full rental period by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full rental period) and also to recover forthwith from the Lessee (i) as damages for loss of the bargain and not as a penalty, a sum, with respect to each Unit, which represents the excess of (x) the present value of the rentals at the time of such termination to the end of the term of this Lease as to such Unit over (y) the then present value of the rentals which the Lessor reasonably estimates to be obtainable for the Unit during such period, (or in the event the Lessee dis-agrees with Lessor's estimate, based on an estimate rendered by an Appraiser as defined in Section 13) such present value to be computed in each case on a basis of a rate of 6% per annum, compounded

semi-annually, from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated, (ii) any damages and expenses, including reasonable attorneys' fees, in addition thereto which the Lessor shall have sustained by reason of the breach of any covenant, representation or warranty of this Lease other than for the payment of rental, and (iii) an amount, which shall, in the reasonable opinion of the Lessor, cause the Lessor's after-tax yield and aggregate reportable earnings (computed on an after-tax basis) under this Lease to be equal to the after-tax yield and aggregate reportable earnings (computed on an after-tax basis) that would have been available to the Lessor and its affiliated corporations if it had not suffered a Determination (as defined in Section 17) to the extent the Lessor shall not have previously been indemnified therefor by the Lessee

The remedies in this Lease provided in favor of the Lessor shall not be deemed exclusive, but shall be cumulative, and shall be in addition to all other remedies in its favor existing at law or in equity. However, no remedy or combination of remedies hereunder shall increase Lessee's obligations under the Lease beyond the aggregate of the amounts which would have been payable had the Lease been performed, including, without limitation, (a) the tax indemnity specified in Section 17 hereof; (b) damages, expenses and obligations resulting from such default; and (c) interest as provided herein. The Lessee hereby waives any mandatory requirements of law, now or hereafter in effect, which might limit or modify the remedies herein provided, to the extent that such waiver is permitted by law, except as provided in Section 1. The Lessee hereby waives any and all existing or future claims to any offset against the rental payments due hereunder, and agrees to make rental payments regardless of any offset or claim which may be asserted by the Lessee or on its behalf.

The failure of the Lessor to exercise the rights granted it hereunder upon the occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies or similar contingencies.

In the event of any default of the type specified in subsection D which does not constitute an Event of Default by reason of the fact it is not material, Lessee's obligations hereunder shall not be diminished and Lessor may seek remedies in law or in equity.

SECTION 11: Return of Units Upon Default. If this Lease shall terminate pursuant to Section 10 or the fourth paragraph of Section 12 hereof, the Lessee shall forthwith deliver possession of the Units then subject to this Lease to the Lessor. Each Unit returned to the Lessor pursuant to this Section 11 shall (i) be in the same operating order, repair and condition as such Unit was at the inception of the Lease, reasonable wear and tear excepted, (ii) have attached or affixed thereto any special device, rack or assembly considered an accession thereto and have removed therefrom any special device, rack or assembly not so considered an accession thereto, and (iii) meet the standards then in effect under the Interchange Rules of the Association of American Railroads, if applicable. For the purpose of delivering possession of any Unit or Units to the Lessor as above required, the Lessee shall, at its own cost, expense and risk:

A. Forthwith and in the usual manner and at usual speed, cause such Units to be transported to such point or points within the United States of America as shall reasonably be designated from time to time by the Lessor, and

B. Arrange for the Lessor to store such Units for a period not exceeding 180 days on any lines of railroad or premises approved by the Lessor until such Units have been sold, leased or otherwise disposed of by the Lessor.

The assembling, delivery, storage and transporting of the Units as hereinbefore provided shall be at the expense and risk of the Lessee and are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises, the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so as to cause the assembly, delivery, storage and transporting of the Units. During any storage period, the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of any Unit, to inspect the same.

Without in any way limiting the obligation of the Lessee under the foregoing provisions of this Section 11, the Lessee hereby irrevocably appoints the Lessor as the agent and the attorney-in-fact of the Lessee, with full power and authority, at any time while the Lessee is obligated to deliver possession of any Unit to the Lessor, to demand and take possession of such Unit in the name and on behalf of the Lessee from whomsoever shall be at the time in possession of such Unit. In connection therewith, the Lessee will supply the Lessor with such documents as the Lessor may reasonably request.

SECTION 12: Assignment; Possession and Use. This Lease or the rentals hereunder shall be assignable in whole or in part by the Lessor without the consent of the Lessee, but the Lessee shall be

under no obligation to any assignee of the Lessor except upon written notice of such assignment from the Lessor. All the rights of the Lessor hereunder (including, but not limited to, the rights under Sections 6, 7, 10 and 17 and the rights to receive the rentals payable under this Lease) shall inure to the benefit of the Lessor's assigns (including the partners or any beneficiary of any such assignee if such assignee is a partnership or a trust, respectively.)

The Lessee, at its own expense, will promptly pay or discharge any and all sums claimed by any party which, if unpaid, might become a lien, charge, security interest or other encumbrance (other than an encumbrance created by the Lessor or Vendor, or resulting from claims against the Lessor or Vendor, not related to the ownership of the Units and assumed by Lessee hereunder) upon or with respect to any Unit, including any accession thereto, or the interest of the Lessor or Vendor therein, and will promptly discharge any such lien, claim, security interest or encumbrance which arises. The Lessee shall not, without the prior written consent of the Lessor, part with the possession or control of, or suffer or allow to pass out of its possession or control, any of the Units, except to the extent permitted by the provisions of the immediately succeeding paragraph.

So long as the Lessee shall not be in default under this Lease, the Lessee and any of its affiliates shall be entitled to the possession and use of the Units upon lines of railroads owned or operated by the Lessee or such affiliates or by a railroad company or companies incorporated in the United States of America (or any State thereof or the District of Columbia) and over which the Lessee, or such affiliates, have trackage rights or rights for operation of their trains, and upon the lines of railroad of connecting and other carriers in the usual interchange of traffic or in, through or run-through service, but only upon and subject to all the terms and conditions of this Lease.

The Lessor shall have the right to declare the Lease provided for herein terminated in case of any unauthorized assignment or transfer of the Lessee's rights hereunder or in case of any unauthorized transfer or sublease of any of the Units.

Lessee will not cause or permit the Units to be used in any manner contrary to law, and will not engage in any unlawful trade or violate any law or carry any cargo that will expose the Units to penalty, forfeiture or capture.

SECTION 13: Extension Option, Right of First Refusal, Sale Option. The Lessor intends to retain the Units for re-lease at the expiration of the term of this Lease. Provided that this Lease has not been earlier terminated and the Lessee is not in default hereunder, the Lessee may, by written notice delivered to the Lessor not less than six months prior to the end of the original term of this Lease, elect to extend the term of this Lease in respect of all of such Units then subject to this Lease for one additional two year period, commencing on the scheduled expiration of the original term of this Lease.

The rental payable during such extended term shall be "fair rental value" which shall be payable January 1 and July 1 during the extended term. Fair rental value shall be determined as (a) such amount as Lessor and Lessee agree; or (b) if Lessor and Lessee cannot, within a period of two (2) weeks agree upon such values, the Lessee or Lessor may then cause the Appraiser to make an appraisal of the fair rental value of all the Units then leased hereunder, and the report of the Appraiser setting forth its determination of such fair rental value shall be delivered to the Lessor and the Lessee not later than three (3) months prior to the end of the original term of this Lease. Such fair rental value shall be determined on the basis of, and shall be equal in amount to, the semi-annual rental which would be payable by an informed and willing lessee and an informed and willing lessor in an arm's-length transaction for the period of the extension. All other terms hereof shall remain in effect throughout the extended term of this Lease.

The term Appraiser shall mean such independent appraiser as the Lessor and the Lessee may mutually agree upon, or failing such agreement, a panel of three (3) independent appraisers, one of whom shall be selected by the Lessor, the second by the Lessee and the third designated by the first two so selected.

In the event the Lessor in a writing delivered to the Lessee, elects to sell such Units to third parties within 60 days after the expiration of the original or extended term of this Lease, the Lessor shall, in a commercially reasonable manner, solicit offers to buy such Units and, upon receipt thereof, shall exhibit to the Lessee a true copy of the most favorable bona fide offer, which Lessor is willing to accept, and the Lessee shall have a right of first refusal exercisable by written notice, delivered within 15 days, to purchase such Units at the sale price and upon the other terms and conditions set forth in such offer.

SECTION 14: Return of Units Upon Expiration of Term. Upon the expiration of the original term or any extended term of this Lease with respect to any Unit, the Lessee will, at its own cost and expense, at the request of the Lessor, deliver possession of such Unit to the Lessor upon such storage tracks of the Lessee as the Lessor may designate, or in the absence of such designation, as the Lessee may select, and permit the Lessor to

store such Unit on such tracks for a period not exceeding 180 days and Lessee shall transport the same at any time within such 180 day period to any reasonable place on the lines of any railroad in the United States all as directed by the Lessor upon not less than 15 days written notice to the Lessee. Any such movement and storage of each such Unit is to be at the risk and expense of the Lessee. During any such storage period, the Lessee will permit the Lessor or any person designated by it including the authorized representative or representatives of any prospective purchaser of any such Unit, to inspect the same; provided, however, that the Lessee shall not be liable, except in the case of negligence of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, either on behalf of the Lessor or any prospective purchaser, the rights of inspection granted under this sentence. Each Unit returned to the Lessor pursuant to this Section 14 shall (i) be in the same operating order, repair and condition as such Unit was in at the inception of this Lease, reasonable wear and tear excepted, (ii) have attached or affixed thereto any special device, rack or assembly considered an accession thereto and have removed therefrom any special device, rack or assembly not so considered an accession thereto, and (iii) meet the standards then in effect under the Interchange Rules of the Association of American Railroads, if applicable. The assembling, delivery, storage and transporting of the Units as hereinbefore provided are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee to so assemble, deliver, store and transport the Units.

SECTION 15: Representations of Lessee and Opinion of Counsel. Lessee hereby represents and warrants and will, on the date of commencement of the original term of this Lease, deliver to the Lessor two counterparts of the written opinion of counsel for the Lessee, addressed to the Lessor and Vendor, in scope and substance satisfactory to the Lessor and Vendor, and their respective counsel, to the effect that:

1. The Lessee is a corporation legally incorporated, validly existing and in good standing under the laws of the State of Illinois.

2. Under the laws of the State of Illinois, the Lessee has full corporate power, authority and legal right to carry on its business as now conducted. Lessee is duly authorized and empowered to execute and deliver the Lease and Security Documents and all such other documents as it has executed and delivered in connection with this transaction.

3. No approval from any governmental authority is required with respect to the entering into or performance of the Lease, the Security Documents or other documents contemplated in this transaction, or if any such approval is required, it has been obtained.

4. The Lease and the Security Documents have been duly authorized, executed and delivered by Lessee and as such constitutes the valid, legal and binding agreement of Lessee, enforceable in accordance with their terms, except as provided by laws affecting creditors' rights generally and to the extent that general equitable principles may limit the right to obtain the remedies of specific performance of obligations thereunder or of injunctive relief.

5. The entering into and performance by Lessee of the Lease and Security Documents will not violate any judgment, order, law or regulation applicable to Lessee nor constitute a default under, or result in the creation of any lien, charge, security interest or other encumbrance upon any assets of Lessee or on the Units, pursuant to any indenture, mortgage, deed or trust, bank loan or credit agreement or other instrument known to be after reasonable investigation, and to which Lessee is a party or by which it may be bound.

6. To the best of counsel's knowledge (after due investigation), there are no actions, suits or proceedings (whether or not purportedly) on behalf of Lessee, pending or threatened against or affecting Lessee or any of its property rights, at law or in equity, or before any regulatory commission or other administrative agency, which could materially and adversely affect the condition, financial or otherwise, of Lessee, as the case may be, and Lessee is not in default with respect to any order or decree of any court or governmental commission, agency or instrumentality.

7. No existing mortgage, deed of trust, or other lien or security interest of any nature whatsoever, which by its terms now covers or affects, or which may hereafter cover or affect, any property or interest of Lessee in the Units, now attaches or hereafter by its terms will attach to the Units or in any manner affect or will affect adversely the right, title and interest of Lessor or holder therein.

8. The Certificates of Acceptance, when executed and delivered by Lessee, will constitute legal, valid and binding obligations of the Lessee enforceable in accordance with their terms.

9. This Lease, and the Security Documents and any assignment hereof or thereof have been duly filed and recorded with the Interstate Commerce Commission, and such filings and recordations will protect (and no further filings or recordations are necessary to protect) the interests of the

Lessor as owner of the Units and the security interest of the Vendor in the Units, subject to no liens or encumbrances except such as are expressly permitted hereunder or under the Security Documents.

SECTION 16: Recording. The Lessee, at its own expense, will cause this Lease, the Security Documents and any assignment hereof or thereof to be filed and recorded with the Interstate Commerce Commission. The Lessee will, from time to time, do and perform any other act and will execute, acknowledge, deliver, file, register, record (and will refile, re-register, deposit and redeposit or re-record whenever required) any and all further instruments required by law or reasonably requested by the Lessor, or the Vendor, for the purpose of proper protection, to their reasonable satisfaction, of the Lessor's or Vendor's respective interests in the Units or for the purpose of carrying out the intention of this Lease, and the Lessee will promptly furnish to the Lessor and Vendor evidence of all such filing, registering, depositing or recording.

SECTION 17. Income Tax Indemnities and Investment Credit Passthrough. This Lease has been entered into on the basis that the Lessor shall be entitled to such deductions and other benefits as are provided to an owner of property, excepting, however, the Investment Tax Credit to which Lessee is entitled in accordance with this Section 17, but including, without limitation:

(i) the deductions for accelerated depreciation for the Units under Section 167(b) of the Internal Revenue Code (the "Code") utilizing a useful life of twelve (12) years for the Units which is the lower limit prescribed in Revenue Procedure 77-10 (I.R.B. 1977-12, 4) for Asset Guideline Class 00.25 under Section 167(m) of the Code and employing the double declining balance method of depreciation switching to the sum-of-the-years digits method of depreciation when most beneficial to the Lessor, utilizing the modified half-year convention as provided in Regulation 1.167(a)-11(c)(2)(ii) ("Depreciation Deduction") based upon the entire amount of Lessor's Purchase Price (as that term is used in Sections 3 and 20(b) hereof); and

(ii) the deductions under Section 163 of the Code in the full amount of any interest paid or accrued by the Lessor in accordance with the Lessor's method of accounting for tax purposes with respect to the Security Documents ("Interest Deduction").

The Lessee agrees that neither it nor any corporation controlled by it, in control of it, or under common control with it, directly or indirectly, will at any time take any action or file any returns or other documents inconsistent with the foregoing and that each of such corporations will file such returns, take such actions and execute such documents as may be reasonable and necessary to facilitate accomplishment of the intent hereof.

The Lessee represents and warrants that an amount equal to at least 20% of the Purchase Price of the Units is a reasonable estimate of what the Units will be worth at the expiration of the initial term of this Lease and that 20 years is the useful life of the Units and, accordingly, that a reasonable estimate of the remaining useful life of the Units at the expiration of the initial term of this Lease is 5 years within the meaning of Rev. Proc. 75-21; that depreciation for federal income tax purposes may be computed on the basis of a useful life of twelve (12) years, being the lower limit prescribed in Rev. Proc. 77-10 for Asset Guideline Class 00.25 under Section 167(m) of the Internal Revenue Code; and that at the time the Lessor becomes the owner of the Units, the Units will not have been used by any person, or "placed in service" by any person within the meaning of that term in Section 1.46-3(d) and Section 1.167(a)-11(e)(1) of the Treasury Regulations, so as to preclude "the original use of such property" within the meaning of Section 167(c)(2) of the Code from commencing with the Lessor and at the time the Lessor becomes the owner of the Units, no depreciation will have been claimed by any person with respect to the Unit. The Lessee will maintain sufficient records to verify such use and upon the request of the Lessor, the Lessee will provide written reports establishing such use.

If, as a result of any act or omission of Lessee or by reason of the incorrectness or inaccuracy of any representation or warranty of the Lessee herein contained, there shall be a Determination (as hereinafter defined) (i) that the Lessor shall not be entitled to all or any portion of the Depreciation Deduction or the Interest Deduction, or (ii) that all or a portion of the Depreciation Deduction or the Interest Deduction shall be recaptured, or (iii) that the Lessor has suffered realization of taxable income by reason of the installation of accessions or additions to the Units which are not readily removable, then the rentals for the Units set forth in Section 3 hereof shall, on the succeeding rental payment date after written notice to the Lessee by the Lessor of such fact, be increased to such amount or amounts as shall, in the reasonable opinion of the Lessor, provide the Lessor with the same after-tax yield and aggregate reportable earnings (computed on an after-tax basis) as the Lessor would have realized had such Determination not been made; and the Lessee forthwith after receipt of such written notice shall pay to the Lessor as additional rent the amount of any interest and/or penalties (including any which may be assessed by the United States of America), assessed against the Lessor which are attributable to such Determination; provided, however, that such rental rate shall not be so increased if such Determination shall be the result of the occurrence of any of the following events.

(i) any amendments to the Code, Internal Revenue Service Regulations and tax rules enacted or promulgated and effective after the Closing Date (as defined in the Security Documents);

(ii) a Casualty Occurrence with respect to such Unit, if the Lessee shall have paid to the Lessor the amounts stipulated under Section 7 hereof;

(iii) a voluntary transfer or other voluntary disposition by the Lessor of any interest in such Unit unless, in each case, an Event of Default shall have occurred and be continuing;

(iv) the failure of the Lessor to claim in a timely manner the Interest Deduction, or elect in a timely manner, the Depreciation Deduction;

(v) the failure of the Lessor to have sufficient income to benefit from the Depreciation Deduction and/or Interest Deduction.

For purposes of this Section 17, a Determination shall have occurred when any of the following events shall have happened: (A) Lessor and Lessee shall have entered into a written agreement with respect to the matters covered by this Section 17; (B) a deficiency shall have been proposed by the Internal Revenue Service or other taxing authority with jurisdiction and the Lessee shall not, within fifteen (15) days after notice thereof shall have been delivered by the Lessor to the Lessee, have requested that the Lessor contest such deficiency and made all arrangements reasonably demanded by the Lessor for the prompt payment or reimbursement of any and all costs and expenses (including without limitation accountants' and attorneys' fees and any taxes or related interest or penalties) which are or may be incurred by the Lessor in prosecuting such contest through available administrative or court proceedings, or the Lessee shall at any stage or level in such proceedings inform Lessor that it does not desire to prosecute further such contest; or (C) there shall have been a determination within the meaning of Section 1313(a) of the Code.

If the rentals have been increased pursuant to this Section 17 and if thereafter (i) the Determination providing the basis for said increase shall be reversed in whole or in part (so as to reduce the amount of tax benefits lost to the Lessor) by a final judgment or decree of the court or administrative agency having jurisdiction, or (ii) the Lessor shall release, waive, compromise or settle any claim contesting the Determination without the written consent of the Lessee, and if the Lessee shall have paid or reimbursed Lessor for all costs related to said contest (including without limitation the fees of accountants and attorneys mutually and reasonably acceptable to Lessor and Lessee), then, commencing on the next succeeding rental payment date, the rental rate in respect of such Unit shall be readjusted downward to such level as will provide the Lessor with the same after-tax yield and aggregate reportable earnings (computed on an after-tax basis) as the Lessor would have realized had no Determination been made; and the Lessor shall, forthwith upon the demand of the Lessor, reimburse Lessee in an amount equal to the sum of (a) the excess, if any, of the increased rental paid by the Lessee with

respect to the Units pursuant to the fourth paragraph of this Section 17 over the rental rate applicable to such Unit as readjusted downward pursuant to this paragraph, and (b) any interest and/or penalties paid by the Lessee to the Lessor pursuant to the fourth paragraph of this Section 17, if any, which were subsequently refunded to the Lessor by the taxing authority with jurisdiction.

The Lessor agrees that it will execute and file a Section 48(d) Election (as hereinafter defined) with the Lessee within the time period prescribed in Section 1.48-4(f)(2) of the Regulations, provided that the Lessor shall have received such Section 48(d) Election from the Lessee at least 30 days prior to the expiration of such time period, and provided further that the Lessor shall not object to any statement set forth in such Election as false or inaccurate.

For purposes of this Section 17, the term "Section 48(d) Election" shall mean a written statement described in Section 1.48-4(f)(1) of the Treasury Regulations which specifies the Units as the property with respect to which the election under Section 48(d) of the Code is being made. The Section 48(d) Election shall be prepared by, and at the expense of, the Lessee.

The Lessor has not made and shall not be deemed to have made any warranty or representation, either express or implied, (i) as to the validity or effectiveness of the Section 48(d) Election as an election under Section 48(d) of the Code to treat the Lessee as having acquired the Units for purposes of the Credit allowed under Section 38 of the Code, (ii) as to the truth or accuracy of any statement in such Election, except the name, address and taxpayer account number of the Lessor and the district director's office with which income tax returns of the Lessor are filed, or (iii) as to the fulfillment of the conditions specified in Section 1.48-4(a)(1) of the Treasury Regulations with respect to Units.

For purposes of this Section 17 and Section 10 hereof, the term "Lessor" shall include any affiliated group within the meaning of Section 1504 of the Code of which the Lessor is a member if consolidated returns are filed for such affiliated group for federal income tax purposes.

The Lessee's and Lessor's agreement to pay any sums which may become payable pursuant to this Section 17 shall survive the expiration or other termination of this Lease.

SECTION 18: Liens and Encumbrances. Lessor may from time to time subject the Units to a lien (previously described as the "Security Documents"). The creation of a lien under any Security

Documents shall not require Lessee's consent or relieve Lessee of its obligations hereunder.

Lessee's rights hereunder are expressly subject to the Security Documents and neither the Lessee, any permitted sub-lessee, nor any other person has or shall have any right, power or authority to create, incur or permit to be placed or imposed or continued upon the Units any liens whatsoever other than the lien of the Security Documents, this Lease and any liens permitted thereunder. Except for the lien of the Security Documents and the Lease and liens, charges and encumbrances permitted therein, the Lessee will not suffer to be continued any lien, charge or encumbrance on any Units and in due course, and in any event when due and payable, will pay or cause to be discharged or make adequate provision for the satisfaction or discharge of all claims or demands, or will cause such Units to be released or discharged from any lien, charge or encumbrance therefor. If any Units are attached, levied upon or taken into custody by virtue of any legal proceeding in any court, the Lessee will promptly notify Lessor thereof by telegram, or other prompt means of communicating, confirmed by letter, addressed to Lessor and within thirty (30) days will cause such Units to be released and all liens thereon other than this Lease and the Security Documents to be discharged and will promptly notify the Lessor thereof in the manner aforesaid or in the alternative, at Lessee's option, treat such Units as if they had suffered a Casualty Occurrence as provided in Section 7.

SECTION 19: Insurance. The Lessee shall at all times while this Lease is in effect maintain or cause to be maintained with such insurers as may be acceptable to the Lessor, any assignee pursuant to Section 12 and the Vendor, property and public liability insurance in respect of each of the Units at the time subject hereto against all risks of liability in an amount and against risks customarily insured against by the Lessee for damage to the property of, or for personal injury suffered by, third persons and insured against by the Lessee on similar equipment owned or leased by Lessee (except in each case as otherwise agreed to by the Lessor, any assignee pursuant to Section 12 and the Vendor). In addition, the Lessee shall at all times while this Lease is in effect maintain or cause to be maintained with such insurers as may be acceptable to the Lessor, any assignee pursuant to Section 12 and the Vendor insurance in respect of each of the Units at the time subject hereto against partial or total loss or damage resulting from risks comparable to those insured against by the Lessee on similar equipment owned or leased by Lessee, in amounts at least equal to \$1,000,000.00 per occurrence, with no more than a \$25,000.00 deductible per occurrence, (except in each case as otherwise agreed to by the Lessor, any assignee thereof and the Vendor). The Lessee will pay and have the obligation to pay, at its own expense, all premiums and other costs and expenses in respect of the insurance described in this paragraph.

All casualty insurance policies maintained pursuant to this Lease shall: (i) name the Lessor as owner of the Equipment, any assignee pursuant to Section 12 as additional insured with respect to the Units, and the Vendor to the extent of its interests under the Security Documents and shall insure the Lessor's such assignee's and the Vendor's respective interests, regardless of any breach or violation by the Lessee of any warranties, declarations, or conditions contained in such policies; (ii) provide that any losses with respect to the Units shall be payable notwithstanding any act, failure to act or negligence of any named insured or any other person; (iii) provide that any losses shall be payable notwithstanding any foreclosure or other proceeding or notice of sale relating to the Units or this Lease or the Security Documents; and (iv) provide that no cancellation thereof shall be effective until at least 30 days after the giving of notice by the insurer thereunder to the Lessor, any assignee pursuant to Section 12, the Vendor and the Lessee. Any insurance maintained by Lessee pursuant to this Section 19 may be evidenced by blanket insurance policies covering the Units and other property or assets of the Lessee.

Upon the execution of this Lease, and thereafter not less than fifteen (15) days prior to the expiration dates of the expiring policies theretofore delivered pursuant to this Section 19, the Lessee shall deliver to the Lessor any assignee pursuant to Section 12 and the Vendor duplicate originals of all policies (or in the case of blanket policies, certificates thereof issued by the insurers thereunder) for the insurance maintained pursuant to this Section 19; provided, however, that if the delivery of a formal policy or certificate, as the case may be, is delayed, the Lessee shall deliver an executed binder with respect thereto and shall deliver the formal policy or certificate, as the case may be, upon receipt thereof.

There shall be no apportionment of premiums in respect of insurance maintained pursuant to this Section 19 at the expiration or any termination of this Lease; and the Lessee may cancel any such policies as of such expiration or termination and obtain any premium refunds incident thereto. Provided that no Event of Default shall have occurred and be continuing, the Lessee shall be entitled to any premium refund or dividend received by the Lessor, the Vendor or the Lessee on account of any insurance maintained by the Lessee pursuant to this Section 19.

In the event that the Lessee shall fail to maintain insurance as herein provided, the Lessor, any assignee pursuant to Section 12, or the Vendor may at its option (but shall be under no obligation to) provide insurance in such amounts as the Lessor or such assignee or the Vendor shall deem advisable for its protection unless, after telegraphic notice from the Lessor, such assignee or the Vendor to the Lessee of such failure upon discovery thereof by the Lessor, such assignee or the Vendor, the Lessee gives immediate telephonic or telegraphic assurances that such failure will be cured and such assurances are satisfactory to the Lessor, such assignee and Vendor in the exercise of their reasonable discretion. In the event the Lessor, any assignee pursuant to Section 12 or the Vendor provides insurance pursuant to this paragraph, the Lessee shall, upon demand from time to time, reimburse the Lessor, such assignee, and the Vendor for the cost thereof, including any expense incurred by any such person in paying any premiums, together with interest, at the rate per annum specified in Section 21 hereof.

Any insurance proceeds received by the Lessor as a result of insurance carried by the Lessee, or condemnation payments received by the Lessor in respect of Units suffering a Casualty Occurrence, shall, provided no Event of Default then exists hereunder, be deducted from the amounts payable by the Lessee to the Lessor in respect of Casualty Occurrences pursuant to Section 7, and, in the case of such insurance proceeds, any amount received by the Lessor which exceeds the Casualty Value in respect of such Casualty Occurrences shall be retained by the Lessor. If the Lessor shall receive any such insurance proceeds or condemnation payments with respect to any Units after the Lessee shall have made payments with respect to such Units pursuant to Section 7 without deduction for such insurance proceeds or such condemnation payments, the Lessor shall, provided no Event of Default then exists hereunder, pay to the Lessee such insurance proceeds and condemnation payments only to the extent of such Section 7 payments made by the Lessee. Insurance proceeds or condemnation payments received by the Lessor in respect of any Unit not suffering a Casualty Occurrence shall, provided no Event of Default then exists hereunder, be paid to the Lessee upon proof satisfactory to the Lessor that any damage to such Unit in respect of which such proceeds were paid has been fully repaired or that such proceeds will be promptly employed by the Lessee to fully repair such damage; provided, however, that such proceeds will be paid only to the extent of the actual cost of repairs incurred or to be incurred by the Lessee, any amount in excess thereof to be remitted by the Lessee to the Lessor upon demand.

SECTION 20: Conditions Precedent to Lessor's Obligations.
Lessor's obligations under the Lease are expressly contingent upon receiving, prior to acceptance of the Units, the following:

(a) the opinion of Lessee's counsel provided for herein;

(b) a certificate by a Vice President of Lessee stating the Purchase Price of the Units.

SECTION 21: Interest on Overdue Rentals. Anything to the contrary herein contained notwithstanding, any nonpayment of rentals and other obligations due hereunder shall result in the obligation on the part of the Lessee promptly to pay, to the extent legally enforceable, interest at a rate per annum equal to 10% on the overdue rentals and other obligations for the period of time during which they are overdue or such lesser rate of interest as may be legally enforceable.

SECTION 22: Notices. Any notice required or permitted to be given by either party hereto to the other shall be deemed to have been given when deposited in the United States certified mails, first-class postage prepaid, addressed as follows:

If to the Lessor: New England Merchants Leasing
Corporation B-3
One Washington Mall
Boston, Massachusetts 02107
Attn: Eugene F. McCullough
President

If to the Lessee: Toledo, Peoria & Western Railroad
Company
2000 East Washington Street
East Peoria, Illinois
Attn: Charles L. Pattison
President

SECTION 23: Severability; Effect and Modification of Lease. Any provision of this Lease which is prohibited or unenforceable in any jurisdiction, shall be, as to such jurisdiction, ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

All covenants, agreements, representations and warranties made by the Lessee herein, and in any certificates or other papers delivered by it or on its behalf, are material and shall be deemed to have been relied upon, where appropriate, by the Lessor notwithstanding any investigation heretofore or hereafter made by it, and shall survive the expiration of the original and any extended term of this Lease in full force and effect so long as any obligations of the Lessee under this Lease remain outstanding and unpaid or unfulfilled.

If the Lessee fails to duly and promptly pay, perform or comply with any of its obligations, covenants and agreements under this Lease, the Lessor may, at its option and without any obligation so to do, pay, perform or comply with any of such obligations, covenants and agreements for the account of the Lessee, and the Lessor may in addition take any and all such further action whether or not pursuant to the provisions of this Lease, as the Lessor deems appropriate to protect and preserve its title, property and interests in the Units and this Lease; none of the foregoing actions which are taken by the Lessor will be construed as waiving any Event of Default under this Lease, and any amount paid or expense incurred by the Lessor in connection with the foregoing (including attorneys' fees) shall, together with interest at the rate per annum specified in Section 21, be payable by the Lessee to the Lessor on demand.

This Lease exclusively and completely states the rights of the Lessor and the Lessee with respect to the leasing of the Units and supersedes all other agreements, oral or written, with respect thereto. No variation or modification of this Lease and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized officers of the Lessor and of the Lessee.

SECTION 24: Execution. This Lease may be executed in counterparts, such counterparts together constituting but one and the same instrument, but the counterpart delivered to the Lessor shall be deemed to be the original counterpart. Although this Lease is dated as of the date first set forth above, for convenience, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgements hereto annexed.

SECTION 25: Jurisdiction and Law Governing. This Lease shall be considered as having been executed in the State of Illinois, U.S.A. irrespective of its actual place of delivery and shall in all respects be governed by, and construed in accordance with, the laws of the State of Illinois, U.S.A., including all matters of construction, validity and performance. Lessee hereby expressly submits to the jurisdiction and venue of all the courts of the United States of America with respect to any action arising out of or relating to this Lease. Final judgment against Lessee in such suit shall be conclusive and may be enforced in other jurisdictions by suit on the judgment, a certified or true copy of which shall be conclusive evidence of the fact and of the amount of any indebtedness of the party therein described; provided always that the Lessor may at its option bring suit, or institute other judicial proceedings, against Lessee or any of its assets in the courts of any country or place where Lessee or

such assets may be found. The Lessee hereby irrevocably waives any immunity from jurisdiction or venue to which it might otherwise be entitled in any action arising out of or relating to the Lease which may be instituted in any such court out of the State of Illinois, and any immunity from the execution or enforcement, in any court of general jurisdiction, in or out of the United States of America, of any judgment obtained in such action.

SECTION 26: Agreement for Lease Only. The Lessor and the Lessee agree that this Lease is, and is intended to be, a true Lease (and not a Lease intended as security or a lease in the nature of a security interest), that as between Lessor and Lessee, Lessor is the owner of the Units for all purposes and that Lessee has no rights to the Units whatsoever other than as Lessee under this Lease, and Lessor and Lessee further agree to treat this lease as a true Lease for all purposes and to take no actions inconsistent with the foregoing.

IN WITNESS WHEREOF, the parties hereto have executed or caused this instrument to be executed as of the date first above written.

NEW ENGLAND MERCHANTS LEASING CORPORATION B-3

By

Paul D. Dene
Its Vice President

(SEAL)

ATTEST:

Leo M. Maurer, Assistant Clerk

TOLEDO, PEORIA & WESTERN RAILROAD COMPANY

By

Its

(SEAL)

ATTEST:

such assets may be found. The Lessee hereby irrevocably waives any immunity from jurisdiction or venue to which it might otherwise be entitled in any action arising out of or relating to the Lease which may be instituted in any such court out of the State of Illinois, and any immunity from the execution or enforcement, in any court of general jurisdiction, in or out of the United States of America, of any judgment obtained in such action.

SECTION 26: Agreement for Lease Only. The Lessor and the Lessee agree that this Lease is, and is intended to be, a true Lease (and not a Lease intended as security or a lease in the nature of a security interest), that as between Lessor and Lessee, Lessor is the owner of the Units for all purposes and that Lessee has no rights to the Units whatsoever other than as Lessee under this Lease, and Lessor and Lessee further agree to treat this lease as a true Lease for all purposes and to take no actions inconsistent with the foregoing.

IN WITNESS WHEREOF, the parties hereto have executed or caused this instrument to be executed as of the date first above written.

NEW ENGLAND MERCHANTS LEASING CORPORATION B-3

By _____
Its

(SEAL)

ATTEST:

TOLEDO, PEORIA & WESTERN RAILROAD COMPANY

By  _____
Its President

(SEAL)

ATTEST:


Asst. Secretary

Commonwealth of)
Massachusetts) SS.
COUNTY OF Suffolk)

On this 24th day of May, 1977, before me personally appeared Paul D. Dean, III and Leo R. Chausse, personally known to me to be the Vice President and Asst. Clerk of New England Merchants Leasing Corporation B-3, respectively and personally known to me to be the same persons whose names are subscribed to in the foregoing instrument, and severally acknowledges that as such President and Clerk they signed and delivered the said instrument on behalf of said corporation and caused the corporate seal to be affixed thereto by the authority of its Board of Directors as the free and voluntary act of said corporation for the uses and purposes set forth.

Jane M. Stokinger
Notary Public

My Commission Expires: 1/31/80

STATE OF)
COUNTY OF) SS.

On this _____ day of _____, 1977, before me personally appeared _____ and _____, personally known to me to be the _____ President and _____ Secretary of Toledo, Peoria & Western Railroad Company, respectively and personally known to me to be the persons whose names are subscribed to in the foregoing instrument, and severally acknowledged that as such _____ President and _____ Secretary they signed and delivered said instrument on behalf of said corporation and caused the corporate seal to be affixed thereto by the authority of its Board of Directors as the free and voluntary act of said corporation for the uses and purposes set forth.

Notary Public

(S E A L)

My Commission Expires: _____

STATE OF)
) SS.
COUNTY OF)

On this _____ day of _____, 1977, before me personally appeared _____ and _____, personally known to me to be the President and Clerk of New England Merchants Leasing Corporation B-3, respectively and personally known to me to be the same persons whose names are subscribed to in the foregoing instrument, and severally acknowledges that as such President and Clerk they signed and delivered the said instrument on behalf of said corporation and caused the corporate seal to be affixed thereto by the authority of its Board of Directors as the free and voluntary act of said corporation for the uses and purposes set forth.

Notary Public

(S E A L)

My Commission Expires: _____

STATE OF Illinois)
) SS.
COUNTY OF Fazewell)

On this 26th day of MAY, 1977, before me personally appeared C. L. Patterson and J. H. Trumores, personally known to me to be the _____ President and Asst. Secretary of Toledo, Peoria & Western Railroad Company, respectively and personally known to me to be the persons whose names are subscribed to in the foregoing instrument, and severally acknowledged that as such _____ President and Asst. Secretary they signed and delivered said instrument on behalf of said corporation and caused the corporate seal to be affixed thereto by the authority of its Board of Directors as the free and voluntary act of said corporation for the uses and purposes set forth.

Michael S. Erickson
Notary Public

My Commission Expires: 1-27-81

(S E A L)

EXHIBIT A

<u>Type</u>	<u>Quantity</u>	<u>Manufacturer</u>	<u>Road Numbers (Both Inclusive)</u>	<u>Total Purchase Price of Units</u>
G.P. Model 38-2 2000 horsepower diesel electric locomotives	4	General Motors Corporation (Electro Motive Division)	2001-2004	\$1,675,520.00

CERTIFICATE OF ACCEPTANCE

TO: The Owner and Holder, as defined in Lease of Equipment dated as of April 15, 1977, between NEW ENGLAND MERCHANTS LEASING CORPORATION B-3 (the "Lessor") and TOLEDO, PEORIA & WESTERN RAILROAD COMPANY (the "Lessee").

I, a duly appointed inspector and authorized representative of TOLEDO, PEORIA & WESTERN RAILROAD COMPANY ("Lessee") and of the above named Lessor, do hereby certify that I have inspected, received, approved and accepted delivery, on behalf of the Lessee under the Lease of Equipment of the following Units of Equipment:

Type of Equipment: GP Model 38-2, 2000 horsepower diesel electric locomotives

Manufacturer: General Motors Corporation (Electro Motive Division)

Place Accepted:

Date Accepted:

Number of Units: 4

Numbered (Road Numbers): 2001 to 2004 (both numbers inclusive)

Purchase Price Per Unit: \$418,880.00

I do further certify that the foregoing Equipment is in good order and condition, and conforms to the Specifications applicable thereto, and at the time of delivery to the Lessee there was plainly, distinctly, permanently and conspicuously marked in contrasting colors upon each side of each Unit the following legend in letters not less than one inch in height:

"Owned by and Leased from New England Merchants Leasing Corporation B-3 and subject to a security interest to Commercial National Bank of Peoria granted by a Conditional Sale Agreement filed under the Interstate Commerce Act, Section 20c."

The execution of this Certificate will in no way relieve or decrease the responsibility of the Manufacturer of the Equipment for warranties it has made with respect to the Equipment.

Inspector and Authorized Representative of Lessor and Holder

CASUALTY VALUE TABLE

<u>PAYMENT</u>	<u>CASUALTY VALUE EXPRESSED AS A PERCENTAGE OF THE PURCHASE PRICE</u>
1	107.64
2	107.13
3	106.28
4	105.23
5	103.96
6	102.53
7	100.93
8	99.13
9	97.14
10	94.97
11	92.65
12	90.17
13	87.52
14	84.73
15	81.77
16	78.69
17	75.47
18	72.09
19	68.61
20	65.00
21	61.28
22	57.53
23	53.75
24	49.87
25	45.88
26	41.81
27	37.62
28	33.34
29	28.94
30	24.44
31	20.00

and thereafter 20%